

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD MERINO, DANY CUX BATEN, ELIAS ANTONIO
HERNANDEZ, and JORGE OREA PAEZ, individually and on
behalf of all others similarly situated

Plaintiffs,

-against-

BEVERAGE PLUS AMERICA CORP., SMC USA CORP.,
YUN S. CHO, GRAND BEVERAGE CORP. and YUN C. CHO,
Defendants.

ECF CASE

10 Civ. 0706 (JSR)

DEFENDANTS'

RESPONSE TO

Plaintiffs' Motion for
damages and class notice

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#
DATE FILED: 10/29/11

Defendants, YUN S. CHO, by PRO SE, makes the following response to Plaintiffs' Motion for damages and class notice required by the Federal Court's Order of September 9, 2011 (Doc. #88) as upon information and belief:

I. Defendant's Response to Plaintiffs' Motion for damages and class notice

1. I do not have anyone who has complaint concerning wages until this action occur.
2. I paid to Plaintiffs' a minimum wage, overtime and spread of hours pay as Plaintiffs Exhibit 12 of Plaintiffs' Memorandum of law in support of Plaintiff' motion for damages and class notice.
3. A Temporary Restraining Order for Richard Merino as Plaintiffs' Exhibit 1, 2 and 3 of Plaintiffs' Memorandum of law in support of Plaintiff' motion for damages and class notice was denied by Federal Judge, Jed S. Rakoff on April 26, 2010
4. The affirmation of Jorge Orea Paez as Plaintiffs Exhibit 4 of Plaintiffs' Memorandum of law in support of Plaintiff' motion for damages and class notice is not correct.
Jorge Orea Paez worked between Jan. 2, 2007 and Feb. 20, 2009 as DEF. 00006 of Exhibit 12 of Plaintiffs' Memorandum of law in support of Plaintiff' motion for damages and class notice
(Attached Exhibit "A")
5. The affirmation of Elias Antonio Hernandez as Plaintiffs' Exhibit 6 of Plaintiffs' Memorandum of law in support of Plaintiff' motion for damages and class notice is not correct.
Elias Antonio Hernandez worked between Jul. 15, 2008 and Jan. 15, 2009 as DEF. 00004 of

Exhibit 12 of Plaintiffs' Memorandum of law in support of Plaintiff' motion for damages and class notice

(Attached Exhibit "B")

6. The affirmation of Paulo Morales as Plaintiffs' Exhibit 9 of Plaintiffs' Memorandum of law in support of Plaintiff' motion for damages and class notice is not correct.

Paulo Morales worked between Sep. 20, 2006 and Oct. 31, 2009 as DEF. 00211 of Exhibit 12 of Plaintiffs' Memorandum of law in support of Plaintiff' motion for damages and class notice (Attached Exhibit "C")

7. The affirmation of Primitivo Aguilar as Plaintiffs' Exhibit 10 of Plaintiffs' Memorandum of law in support of Plaintiff' motion for damages and class notice is not correct.

Primitivo Aguilar worked as a helper about 2 months, May and June in 2007.

And he was arrested for an assault charges in the bar and he was fired next week because he did not show up for work again after he got drunk.

(Attached Exhibit "D")

8. The Ticket Details and Violation Copy of Plaintiffs' Exhibit 11 of Plaintiffs' Memorandum of law in support of Plaintiff' motion for damages and class notice was produced by me and was paid by me not by the driver.

(Attached Exhibit "E")

9. According to Plaintiffs' Exhibit 13 through 23 of Plaintiffs' Memorandum of law in support of Plaintiff' motion for damages and class notice, Plaintiffs calculated by their emotional value for the wages even though Plaintiffs taken into evidence of Plaintiffs' Exhibit 12 of Plaintiffs' Memorandum of law in support of Plaintiff' motion for damages and class notice as explained in personnel record, weekly pay was calculated by an hour including spread hours and hourly rate is over the minimum wage as agreed upon hiring each worker and yet plaintiffs' lawyer sets hourly rate as their convenience.

Moreover, Plaintiffs only presented with Yun S. Cho's personnel records that can not prove the defendant have any minimum wage violations, unlawful deductions, overtime and spread of hours violations for money damages and plaintiffs has failed to provide genuineness of documents which shows plaintiffs did not received minimum wage and overtime payment.

(Attached Exhibit "F")

10. According to Plaintiffs' Exhibit 24 of Plaintiffs' Memorandum of law in support of Plaintiff' motion for damages and class notice, it is irrelevant to support plaintiffs' motion for damages and class notice because these partial EBT has limited to only certain circumstance and criteria.

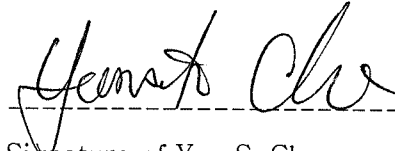
(Attached Exhibit "G")

Therefore, I, individual defendant, should not be held liable against the Plaintiffs.

Defendants reserve the right to have supplement these responses upon receipt of additional and/or continuing information.

WHEREFORE, I respectfully request an order granting to dismiss the plaintiffs' motion.

Dated: Maspeth, New York
Oct. 26, 2010

A handwritten signature in black ink, appearing to read 'Yun S. Cho', is written over a horizontal dashed line.

Signature of Yun S. Cho
5887 55th Street
Maspeth, NY 11378
Tel: (718) 552-9055
Fax: (718) 552-9056

TO: Maia Goodell
Scott Michels
Vladeck, Waldman, Elias & Engelhard, P.C.
Attorneys for Plaintiffs
1501 Broadway, Suite 800
New York, NY 10036
(212) 403-7300

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD MERINO, DANY CUX BATEN, ELIAS ANTONIO
HERNANDEZ, and JORGE OREA PAEZ, individually and on
behalf of all others similarly situated,

Plaintiffs,

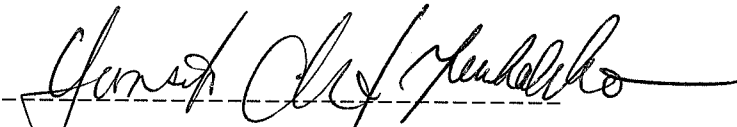
- against -

BEVERAGE PLUS AMERICA CORP., SMC USA CORP.,
YUN S. CHO, GRAND BEVERAGE CORP. and YUN C. CHO,
Defendants.

ECF CASE
10 Civ. 0706 (JSR)
AFFIRMATION OF
SERVICE

I, Yun S. Cho and Yun C. Cho, declare under penalty of perjury that I have served a copy of the attached **Response to Plaintiffs' Motion for damages and class notice** upon Maia Goodell; Vladeck, waldman, Elias & Engelhard, P.C. whose address is 1501 Broadway, Suite 800, New York, NY 10036 By Certified Mail in a sealed envelope, with postage prepaid thereon, in an official depository of the United States Postal Service within the State of New York, addressed to the last known addressee.

Dated: Maspeth, New York
Oct. 27, 2011


Signature of Yun S. Cho & Yun C. Cho
5887 55th Street
Maspeth, NY 11378
Tel: (718) 552-9055
Fax: (718) 552-9056

7011 0110 0001 0980 6498

U.S. Postal Service
CERTIFIED MAILTM RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com.

NEW YORK NY 10036

OFFICIAL USE

Postage	\$ 5.95	0020
Certified Fee	\$2.85	02
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 8.80	10/27/2011

Sent To
Maria Goodell, esq. Vlachakis, Malabar & P.C.
 Street, Apt. No.,
 or PO Box No. *1501 BROADWAY, SUITE 800*
 City, State, ZIP+4
NEW YORK, NY 10036

PS Form 3800, August 2006

See Reverse for Instructions

LITTLE NECK STATION
 FLUSHING, New York
 113629997

3568880020-0099

10/27/2011 (800)275-8777 01:47:43 PM

Sales Receipt

Product Description	Sale Unit Qty Price	Final Price
------------------------	------------------------	----------------

NEW YORK NY 10036 \$5.95

Zone-1 Priority Mail

2 lb. 3.90 oz.

Expected Delivery: Fri 10/28/11

Certified \$2.85

Label #: 70110110000109806498

Customer Postage -\$5.60

Issue PVI: \$3.20

28c Stamp 20 \$0.28 \$5.60

Dom. Money Order \$36.00

19050048090

Domestic Money Order Fee \$1.10

Subtotal: \$37.10

Total: \$45.90

Paid by:

Cash \$60.00

Change Due: -\$14.10

Order stamps at usps.com/shop or
 call 1-800-Stamp24. Go to
usps.com/clicknship to print
 shipping labels with postage. For
 other information call
 1-800-ASK-USPS.

Get your mail when and where you
 want it with a secure Post Office
 Box. Sign up for a box online at
usps.com/poboxes.

Bill#:1000100745818

Clerk:02

All sales final on stamps and postage

PERSONEL RECORD

Name: Mr./Ms. George Owen Pass Tel: ()
 Cell: (212) 247-2409

Address: 97-41 73rd St 2FL
Ozone Park, NY 11416

D. O. B.: 7/1/11 Mo Date Yr S. S. N.: +

Driver License Number:

No. Of Dependents: 3

Date Started/Terminated: 1/2/07 - 2/20/09

Position: Driver

Pay Rate/Hr/Date: \$ 45 (75) 1/02/07, \$ 48 (75) 4/2/07
\$50 (75) 4/07/08, \$ 50 (82) 6/2/08
 \$ / \$ /

Remarks: $40 + 5 \times 1.5 + 2 = 49.5$ / $40 + 8 \times 1.5 + 3 = 55$
 $40 + 10 \times 1.5 + 4 = 59.00$ / $40 + 8 \times 1.5 + 4 = 56$

EXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- X
RICHARD MERINO, DANY CUX BATEN, ELIAS
ANTONIO HERNANDEZ, and JORGE OREA PAEZ,
individualmente y a favor de otros situados similarmente,

10 Civ 0706 (JSR)

Quejantes,

ECF CASE

- against -

AFIRMACION DE
JORGE OREA PAEZ

BEVERAGE PLUS AMERICA CORP., SMC USA
CORP., YUN S. CHO, and GRAND BEVERAGE CORP.

Defendientes.

----- X

Jorge Orea Paez, bajo pena de perjurio, afirma y declara lo siguiente:

1. Soy un quejante en este caso y doy esta afirmacion en apoyo a la mocion de la clase de quejantes para la certificacion preliminar bajo la ley de estandares laborales justos, para el aviso por parte de la Corte a las personas en situacion similar, y para la descubierta rapida.

2. Trabaje para los defendientes desde enero 2006 hasta febrero 2009. Trabaje para los defendientes como chofer.

3. Como los choferes y ayudantes todos trabajaban en el mismo almacen y tenian un horario similar, los veia llegar al trabajo y salir del trabajo, les vi cumpliendo sus tareas, y vi como fueron pagados. Yun S. Cho y los gerentes de los defendientes tenian en ocasion reuniones del grupo con todos los choferes y ayudantes para darnos instrucciones sobre nuestras responsabilidades de trabajo y/o nuestras horas y pago. Ademas nosotros los choferes y ayudantes habitualmente nos hablabamos entre nosotros acerca de nuestras responsabilidades de trabajo, nuestros pagos y las horas que trabajabamos.

4. Los choferes al igual que los ayudantes eramos responsables para entregar cajas de bebidas a los clientes de los defendientes desde el almacen de los defendientes en Queens. En cualquier momento los defendientes empleaban aproximamente cuatro choferes, al igual que cuatro o cinco ayudantes para trabajar con los choferes.

5. Mis responsabilidades como chofer fueron organizar los ordenes, cargar los camiones con cajas de bebidas, transporter los productos, y descargarlos a las tiendas de los defendientes. Como chofer era responsable de manejar el camion hasta las tiendas de los clientes; los ayudantes me ayudaban a cargar el camion y me acompanaban a las tiendas de los clientes para ayudar en hacer las entregas.

6. Las responsabilidades de los otros choferes y ayudantes fueron esencialmente lo mismo que las mias.

7. Segun mi observacion muchos choferes y ayudantes trabajaron para los defendientes por solo un corto tiempo. En el tiempo en lo cual trabajaba para los defendientes, habian por lo menos 30 otras personas quienes trabajaron como choferes, y por lo menos 30 otras personas quienes trabajaron como ayudantes.

8. Yo hice entregas a las tiendas de los clientes en Manhattan, Brooklyn y Queens. Nunca hice entregas a tiendas fuera del Estado de New York.

9. Cuando empeze a trabajar para los defendientes, trabajaba desde las 7:00 am hasta aproximamente las 5:00 pm. Desde el 2008, usualmente trabajaba hasta aproximamente las 6:00 pm. Trabajaba cinco dias a la semana y trabajaba mas de cuarenta horas cada semana. Nunca fue pagado las horas extras.

10. Cuando empeze a trabajar para los defendientes en enero del 2006, ganaba \$430 por semana. Despues de cinco meses mi pago aumento a \$450. Aproximamente seis

meses mas tarde mi pago aumento a \$480 por semana, y aproximadamente seis meses despues de eso my pago aumento a \$510. Llegando al 2008, recibia \$530 por semana, lo que yo ganaba hasta que me despidieron.

11. Me pagaban una vez por semana. Al fin de la semana, Yun S. Cho o uno de los gerentes de los defendientes me daba mi pago semanal en efectivo. Los otros choferes y ayudantes tambien fueron pagados al fin de cada semana en efectivo.

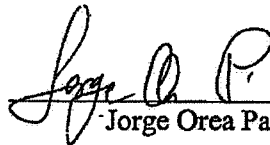
12. Segun mi observacion los otros choferes y ayudantes trabajaban un horario similar al mio. He hablado con otros choferes y ayudantes sobre los pagos de ellos; cada uno me dijo que nunca recibieron pago para las horas extra.

13. Mi gerente fue Yun S. Cho. Es el que me contrato y me despido. Tambien tenia otro gerente llamado Rafael.

14. En el momento en que fui despedido, los defendientes tenian cuatro camiones para hacer entregas.

Declaro bajo pena de perjurio que todo lo antecedente es la verdad y corecto.

Ejecutado el 5/2/10 en NEW YORK.


Jorge Orea Paez

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- X
RICHARD MERINO, DANY CUX BATEN, ELIAS
ANTONIO HERNANDEZ, and JORGE OREA PAEZ,
and, individually and on behalf of all others similarly
situated,

10 Civ 0706 (JSR)

ECF CASE

Plaintiffs,

AFFIRMATION OF
JORGE OREA PAZ

- against -

BEVERAGE PLUS AMERICA CORP., SMC USA
CORP., YUN S. CHO, and GRAND BEVERAGE CORP.

Defendants.
----- X

Jorge Orea Paez, under penalty of perjury, affirms and states as follows:

1. I am a plaintiff in the above-captioned case and I submit this affirmation in support of Class Plaintiffs' Motion for Preliminary Certification Pursuant to the Fair Labor Standards Act, for Court-Facilitated Notice to Similarly Situated Persons, and for Expedited Discovery.
2. I worked for defendants from January 2006 until February 2009. I worked for defendants as a driver.
3. Because the drivers and helpers all worked in the same warehouse facility and had similar hours, I saw them arrive and leave work, saw them performing their duties, and saw how they were paid. Yun S. Cho and defendants' managers occasionally had group meetings with all of the drivers and helpers to give us instructions about our job duties and/or hours and pay. In addition, we drivers and helpers regularly spoke to each other about our job duties, pay and the hours we worked.

4. Both drivers and helpers were responsible for delivering boxes of beverage products to defendants' customers from defendants' warehouse facility in Queens. At any given time, defendants employed approximately four drivers, as well as four or five helpers to work with the drivers.

5. My duties as a driver were to organize orders, load delivery trucks with boxes of beverage products, transport the products, and unload them at the customers' stores. As a driver, I was responsible for driving the delivery truck to the customers' stores; the helpers would help load the truck and accompany me to the customers' stores to assist in making the deliveries.

6. The duties of other drivers and helpers were substantially the same as mine.

7. In my observation, many drivers and helpers worked for defendants for only a short time. During the time I worked for defendants, there were at least 30 other people who had worked as drivers, and at least 30 other people who had worked as helpers.

8. I made deliveries to customers' stores in Manhattan, Brooklyn and Queens. I never made deliveries to stores outside of the State of New York.

9. When I started working for defendants, I worked from 7:00 am to approximately 5:00 pm. Since 2008, I usually worked until approximately 6:00 pm. I worked five days a week and worked more than forty hours each week. I was never paid overtime.

10. When I started working for defendants in January 2006, I earned \$430 per week. After five months my weekly pay increased to \$450. Approximately six months later my

pay increased to \$480 per week, and approximately six months after that my pay increased to \$510. By 2008, I was receiving \$530 per week, which is what I earned until I was fired.

11. I was paid once a week. At the end of the week, Yun S. Cho or one of defendants' managers would give me my weekly pay in cash. Other drivers and helpers were also paid at the end of each week in cash.

12. In my observation, the other drivers and helpers worked similar hours to me. I have spoken to other drivers and helpers about their pay; each of them told me that they had never been paid overtime.

13. My manager was Yun S. Cho. He is the one who hired me and fired me. I also had another manager named Rafael.

14. At the time I was fired, defendants had four delivery trucks.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 2, 2010 in New York.

EXHIBIT “B”

PERSONEL RECORD

Name: Mr/Ms. Efra Hernandez Tel: ()
 Cell: (917) 459-0997

Address: 94-31 121st

D. O. B.: / / S. S. N.: - -
 Mo Date Yr

Driver License Number:

No. Of Dependents:

Date Started/Terminated: 7/15/08 - 1/16/09

Position: Driver

Pay Rate/Hr/Date: \$ 4.75 / 7/11/08, \$ /
 \$ / , \$ /
 \$ / , \$ /

Remarks: 40hr + 8.25 + 40 = 56hr

EXHIBIT 6

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- X
RICHARD MERINO, DANY CUX BATEN, ELIAS
ANTONIO HERNANDEZ, and JORGE OREA PAEZ,
individualmente y a favor de otros situados similarmente,

10 Civ 0706 (JSR)

Quejantes,

ECF CASE

- against -

AFIRMACION DE
ELIAS ANTONIO
HERNANDEZ

BEVERAGE PLUS AMERICA CORP., SMC USA
CORP., YUN S. CHO, and GRAND BEVERAGE CORP.

Defendientes.

----- X

Elias Antonio Hernandez, bajo pena de perjurio, afirma y declara lo siguiente:

1. Soy un quejante en este caso y doy esta afirmacion en apoyo a la mocion de la clase de quejantes para la certificacion preliminar bajo la ley de estandares laborales justos, para el aviso por parte de la Corte a las personas en situacion similar, y para la descubierta rapida.

2. Trabaje para los defendientes aproximadamente desde el 15 abril 2008 hasta el 15 enero 2009. Trabaje para los defendientes como chofer. Quando fue despedido el gerente me dijo que no me necesitaba; no me dio otra razon.

3. Como los choferes y ayudantes todos trabajaban en el mismo almacen y tenian un horario similar, los veia llegar al trabajo y salir del trabajo, les vi cumpliendo sus trabajos, y vi como fueron pagados. Yun S. Cho y los gerentes de los defendientes a ciertas ocasiones tenian reuniones de grupo con todos los choferes y ayudantes para darnos instrucciones sobres nuestras responsabilidades de trabajo y/o nuestras horas y pago. Ademas

nosotros los choferes y ayudantes hablabamos uno con el otro a cada rato de nuestras responsabilidades de trabajo, del pago y de las horas que trabajabamos.

4. Ambos los choferes y los ayudantes fuimos responsables para entregar cajas de bebidas a los clientes de los defendientes, desde el almacen de los defendientes en Queens. En cualquier momento, los defendientes empleaban aproximamente cuatro choferes, al igual que cuatro o cinco ayudantes para trabajar con los choferes.

5. Mis responsabilidades como chofer fueron : organizar los ordenes, cargar los camiones con cajas de bebidas, transporter los productos, y descargarlos a las tiendas de los clientes. Como chofer, fue responsable para manejar el camion hasta las tiendas de los clientes; los ayudantes ayudaban a cargar el camion y me acompanaban a las tiendas de los clientes para ayudar en hacer las entregas.

6. Las responsabilidades de los otros choferes y ayudantes fueron basicamente las mismas que las mias.

7. Segun mi observacion muchos choferes y ayudantes trabajaron para los defendientes por solo un rato breve.

8. Hacia entregas a las tiendas de los clientes en Manhattan, Brooklyn y Queens. Nunca hice entregas fuera del Estado de New York.

9. Empezaba el trabajo a las 7:00 am y trabajaba hasta las 5:00 pm o mas tarde. En el verano yo trabajaba normalmente hasta las 6:00 o 7:00 pm, y a veces hast a las 8:00 pm. Si no habia bastante trabajo yo salia alrededor de las 5:00 pm, pero eso no ocurria mas de una vez a la semana.

10. Yo trabajaba mas de cuarenta horas cada semana, pero nunca fue pagado las horas extras.

11. Yo ganaba \$480 la semana, menos cualquier "tickets" de estacionamiento que habia recibido. Usualmente ganaba \$385 la semana despues de la deduccion por los "tickets" por los defendientes. Recibia alrededor de un "ticket" por semana. No podia hacer entregas en el Midtown Manhattan sin recibir "tickets" de estacionamiento.


12. Me pagaban una vez por semana. Al fin de la semana Yun S. Cho o uno de los gerentes de los defendientes me daba mi pago semanal en efectivo. Los otros choferes y ayudantes tambien fueron pagados al fin de cada semana en efectivo.

13. Segun mi observacion los otros choferes y ayudantes trabajaron horas similares al las mias. Otros trabajadores me han dicho que no recibian el pago de las horas extras.

14. Mi gerente fue Yun S. Cho. Es el quien me despidio. Tambien tenia otro gerente llamado Rafael.

Declaro bajo pena de perjurio que todo lo antecedente es la verdad y corecto.

Ejecutado el 4-30-2010 en NY.



Elias Antonio Hernandez

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- X
RICHARD MERINO, DANY CUX BATEN, ELIAS
ANTONIO HERNANDEZ, and JORGE OREA PAEZ,
and, individually and on behalf of all others similarly
situated,

10 Civ 0706 (JSR)

ECF CASE

Plaintiffs,

- against -

AFFIRMATION OF
ELIAS ANTONIO
HERNANDEZ

BEVERAGE PLUS AMERICA CORP., SMC USA
CORP., YUN S. CHO, and GRAND BEVERAGE CORP.

Defendants.
----- X

Elias Antonio Hernandez, under penalty of perjury, affirms and states as follows:

1. I am a plaintiff in the above-captioned case and I submit this affirmation in support of 'Class Plaintiffs' Motion for Preliminary Certification Pursuant to the Fair Labor Standards Act, for Court-Facilitated Notice to Similarly Situated Persons, and for Expedited Discovery.

2. I worked for defendants approximately from April 15, 2008 until January 15, 2009. I worked for defendants as a driver. When I was fired, the manager told me that I was no longer needed; I was not given any other reason.

3. Because the drivers and helpers all worked in the same warehouse facility and had similar hours, I saw them arrive and leave work, saw them performing their duties, and saw how they were paid. Yun S. Cho and defendants' managers occasionally had group meetings with all of the drivers and helpers to give us instructions about our job duties and/or

hours and pay. In addition, we drivers and helpers regularly spoke to each other about our job duties, pay and the hours we worked.

4. Both drivers and helpers were responsible for delivering boxes of beverage products to defendants' customers from defendants' warehouse facility in Queens. At any given time, defendants employed approximately four drivers, as well as four or five helpers to work with the drivers.

5. My duties as a driver were to organize orders, load delivery trucks with boxes of beverage products, transport the products, and unload them at the customers' stores. As a driver, I was responsible for driving the delivery truck to the customers' stores; the helpers would help load the truck and accompany me to the customers' stores to assist in making the deliveries.

6. The duties of other drivers and helpers were substantially the same as mine.

7. In my observation, many drivers and helpers worked for defendants for only a short time.

8. I made deliveries to customers' stores in Manhattan, Brooklyn and Queens. I never made deliveries to stores outside of the State of New York.

9. I started work at 7:00 am and worked until 5:00 pm or later. In the summer, I usually worked until 6:00 or 7:00 pm, and sometimes until 8:00 pm. If business was not too busy, I left around 5:00 pm, but that did not happen more than once a week.

10. I worked more than forty hours every week, but was never paid overtime.

11. I earned \$480 per week, minus any parking tickets I received. I usually made \$385 per week after defendants' deductions for parking tickets. I received about one

parking ticket per week. I could not make deliveries in midtown Manhattan without receiving parking tickets.

12. I was paid once a week. At the end of the week, Yun S. Cho or one of defendants' managers would give me my weekly pay in cash. Other drivers and helpers were also paid at the end of each week in cash.

13. In my observation, the other drivers and helpers worked similar hours to me. Other workers have told me that they did not receive overtime.

14. My manager was Yun S. Cho. He is the one who fired me. I also had another manager named Rafael.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 30, 2010 in New York.

EXHIBIT “C”

PERSONEL RECORD

Name: Mr./Ms. Paulo E. Morales Tel: (718) 760-2180
 Cell: (347) 753-2783

Address: 40-22 Doncan Av
Glenhurst NY 11573

D. O. B.: 1/1/ S. S. N.: - - -
 Mo Date Yr

Driver License Number: 630 4572 4400

No. Of Dependents: 2 (any)

Date Started/Terminated: 9/20/06 - 10/31/06

Position: Driver

Pay Rate/Hr/Date: \$4.80 (1st) 9/20/06 \$ 1
 \$ 1 \$ 1
 \$ 1 \$ 1

Remarks: 60-10-15-4-59
didn't show up for work for 2 days.
and late for work everyday at least 15 min

EXHIBIT 9

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- X
RICHARD MERINO, DANY CUX BATEN, ELIAS
ANTONIO HERNANDEZ, and JORGE OREA PAEZ, and,
individually and on behalf of all others similarly situated, 10 Civ 0706 (JSR)

Plaintiffs, ECF CASE

- against -

AFFIRMATION OF
PAULO MORALES

BEVERAGE PLUS AMERICA CORP., SMC USA CORP.,
YUN S. CHO, and GRAND BEVERAGE CORP.

Defendants.

----- X

Paulo Morales, under penalty of perjury, affirms and states as follows:

1. I am an opt-in plaintiff in the above-captioned case and I submit this affirmation in support of Class Plaintiffs' Motion for Damages.

2. I worked for defendants from approximately March 2006 to August 2006. I worked for defendants as a driver.

3. Because the drivers and helpers all worked in the same warehouse facility and had similar hours, I saw them arrive and leave work, saw them performing their duties, and saw how they were paid. Yun S. Cho and defendants' managers occasionally had group meetings with all of the drivers and helpers to give us instructions about our job duties and/or hours and pay. In addition, we drivers and helpers regularly spoke to each other about our job duties, pay and the hours we worked.

4. Both drivers and helpers were responsible for delivering boxes of beverage products to defendants' customers from defendants' warehouse facility in Queens. At any given time, defendants employed approximately four drivers, as well as four or five helpers to work with the drivers.

5. When I was hired, I was told I would be paid a weekly salary. I never discussed overtime payments with defendants, nor was I told how many hours per week I would be working. Defendants told me to arrive at work at 7 a.m. I and the other workers were then required to stay at work until defendants told us we were free to go for the day.

6. I was never paid overtime.

7. My salary was \$440 per week during my whole time at the company.

8. I was paid once a week. At the end of the week, Yun S. Cho or one of defendants' managers would give me my weekly pay in cash. Other drivers and helpers were also paid at the end of each week in cash.

9. In my observation, the other drivers and helpers worked similar hours to me.

10. I have spoken to other drivers and helpers about their pay and learned that other drivers were paid a similar amount to what I was paid. Each of them told me that they had never been paid overtime.

I declare under penalty of perjury that the foregoing is true and correct. Executed on _____ in _____, New York.

**CORTE DE DISTRITO DE LOS ESTADOS UNIDOS
PARA EL DISTRITO SUR DE NUEVA YORK**

----- X
**RICHARD MERINO, DANY CUX BATEN, ELÍAS
ANTONIO HERNÁNDEZ y JORGE OREA PÁEZ, y, de
forma individual y en representación de otros situados de
manera similar,**

10 Civ 0706 (JSR)

ECF CASE

Demandantes,

- contra -

**AFIRMACIÓN DE
PAULO MORALES**

**BEVERAGE PLUS AMERICA CORP., SMC USA
CORP., YUN S. CHO y GRAND BEVERAGE CORP.**

Demandados.

----- X
Paulo Morales, bajo pena por perjurio, afirma y declara lo siguiente:

- 1. Soy un demandante por opción en el caso antes rotulado y presento esta afirmación en respaldo de la Moción por Daños y Perjuicios de los Demandantes Colectivos.**
- 2. Trabajé para los demandados aproximadamente hasta Marzo 2006 desde Agosto 2006. Trabajé para los demandados como chofer.**
- 3. Debido a que los choferes y ayudantes todos trabajaban en el mismo depósito y tenían horarios similares, los vi cuando llegaban y se iban del trabajo, los vi desempeñarse en sus tareas y vi cómo se les pagaba. Yun S. Cho y los gerentes de los demandados en ocasiones tenían reuniones grupales con todos los choferes y los ayudantes para darnos instrucciones acerca de nuestras responsabilidades laborales y/o de los horarios y salarios. Además, los choferes y ayudantes regularmente hablábamos entre nosotros acerca de nuestras responsabilidades laborales, salarios y horarios de trabajo.**
- 4. Tanto los choferes como los ayudantes éramos responsables de entregar cajas de productos de bebidas a los clientes de los demandados desde el depósito de los**

demandados en Queens. En un momento dado, los demandados emplearon aproximadamente a cuatro choferes, así como también a cuatro o cinco ayudantes para que trabajaran con los choferes.

5. Cuando me contrataron, se me indicó que me pagarían un salario semanal. Nunca discutí los pagos de horas extra con los demandados, ni se me indicó cuántas horas por semana trabajaría. Los demandados me dijeron que debía llegar al trabajo a las 7 a.m. Los otros trabajadores y yo debíamos permanecer en el trabajo hasta que los demandados nos decían que podíamos irnos por ese día.

6. Nunca me pagaron horas extras.

7. Mi salario fue \$440 semanales durante todo mi tiempo en la compañía.

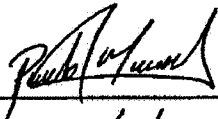
8. Me pagaban una vez a la semana. Al final de la semana, Yun S. Cho o uno de los gerentes de los demandados me daba mi pago semanal en efectivo. Otros choferes y ayudantes también recibían su pago al final de cada semana en efectivo.

9. Según lo que observé, los otros choferes y ayudantes trabajaban horarios similares a los míos.

10. He hablado con otros choferes y ayudantes acerca de su pago y me enteré de que a otros choferes se les pagaba montos similares a los que yo recibía. Cada uno de ellos me dijo que nunca les pagaron horas extras.

Declaro bajo pena por perjurio que lo dicho anteriormente es verdadero y correcto.

Firma



Ejecutado el 10/11/11 en Queens., Nueva York.

EXHIBIT “D”

EXHIBIT 10

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- X
RICHARD MERINO, DANY CUX BATEN, ELIAS
ANTONIO HERNANDEZ, and JORGE OREA PAEZ,
and, individually and on behalf of all others similarly
situated,

10 Civ 0706 (JSR)

ECF CASE

Plaintiffs,

AFFIRMATION OF
PRIMITIVO AGUILAR

- against -

BEVERAGE PLUS AMERICA CORP., SMC USA
CORP., YUN S. CHO, and GRAND BEVERAGE CORP.

Defendants.
----- X

Primitivo Aguilar, under penalty of perjury, affirms and states as follows:

1. I am an opt-in plaintiff in the above-captioned case and I submit this affirmation in support of Class Plaintiffs' Motion for Damages.

2. I worked for defendants for approximately six months in 2005 or 2006. I worked for defendants as a helper.

3. Because the drivers and helpers all worked in the same warehouse facility and had similar hours, I saw them arrive and leave work, saw them performing their duties, and saw how they were paid. Yun S. Cho and defendants' managers occasionally had group meetings with all of the drivers and helpers to give us instructions about our job duties and/or hours and pay. In addition, we drivers and helpers regularly spoke to each other about our job duties, pay and the hours we worked.

4. Both drivers and helpers were responsible for delivering boxes of beverage products to defendants' customers from defendants' warehouse facility in Queens. At

any given time, defendants employed approximately four drivers, as well as four or five helpers to work with the drivers.

5. When I was hired, I was told I would be paid a weekly salary. I never discussed overtime payments with defendants, nor was I told how many hours per week I would be working. Defendants told me to arrive at work at 7 a.m. I and the other workers were then required to stay at work until defendants told us we were free to go for the day.

6. I was never paid overtime.

7. I earned \$380 per week during my time at the company.

8. I was paid once a week. At the end of the week, Yun S. Cho or one of defendants' managers would give me my weekly pay in cash. Other drivers and helpers were also paid at the end of each week in cash.

9. In my observation, the other drivers and helpers worked similar hours to me.

10. I have spoken to other drivers and helpers about their pay and learned that other drivers were paid a similar amount to what I was paid. Each of them told me that they had never been paid overtime.

I declare under penalty of perjury that the foregoing is true and correct. Executed on _____ in _____, New York.

CORTE DE DISTRITO DE LOS ESTADOS UNIDOS
PARA EL DISTRITO SUR DE NUEVA YORK

----- X
RICHARD MERINO, DANY CUX BATEN, ELÍAS
ANTONIO HERNÁNDEZ y JORGE OREA PÁEZ, y, de
forma individual y en representación de otros situados de
manera similar,

10 Civ 0706 (JSR)

ECF CASE

Demandantes,

- contra -

AFIRMACIÓN DE
PRIMITIVO AGUILAR

BEVERAGE PLUS AMERICA CORP., SMC USA CORP.,
YUN S. CHO y GRAND BEVERAGE CORP.

Demandados.

----- X

Primitivo Aguilar, bajo pena por perjurio, afirma y declara lo siguiente:

1. Soy un demandante por opción en el caso antes rotulado y presento esta afirmación en respaldo de la Moción por Daños y Perjuicios de los Demandantes Colectivos.
2. Trabajé para los demandados aproximadamente seis meses en 2005 o 2006. Trabajé para los demandados como ayudante.
3. Debido a que los choferes y ayudantes todos trabajaban en el mismo depósito y tenían horarios similares, los vi cuando llegaban y se iban del trabajo, los vi desempeñarse en sus tareas y vi cómo se les pagaba. Yun S. Cho y los gerentes de los demandados en ocasiones tenían reuniones grupales con todos los choferes y los ayudantes para darnos instrucciones acerca de nuestras responsabilidades laborales y/o de los horarios y salarios. Además, los choferes y ayudantes regularmente hablabamos entre nosotros acerca de nuestras responsabilidades laborales, salarios y horarios de trabajo.
4. Tanto los choferes como los ayudantes éramos responsables de entregar cajas de productos de bebidas a los clientes de los demandados desde el depósito de los

demandados en Queens. En un momento dado, los demandados emplearon aproximadamente a cuatro choferes, así como también a cuatro o cinco ayudantes para que trabajaran con los choferes.

5. Cuando me contrataron, se me indicó que me pagarían un salario semanal. Nunca discutí los pagos de horas extra con los demandados, ni se me indicó cuántas horas por semana trabajaría. Los demandados me dijeron que debía llegar al trabajo a las 7 a.m. Los otros trabajadores y yo debíamos permanecer en el trabajo hasta que los demandados nos decían que podíamos irnos por ese día.

6. Nunca me pagaron horas extras.

7. Mi salario fue \$380 semanal durante todo mi tiempo en la compañía.

8. Me pagaban una vez a la semana. Al final de la semana, Yun S. Cho o uno de los gerentes de los demandados me daba mi pago semanal en efectivo. Otros choferes y ayudantes también recibían su pago al final de cada semana en efectivo.

9. Según lo que observé, los otros choferes y ayudantes trabajaban horarios similares a los míos.

10. He hablado con otros choferes y ayudantes acerca de su pago y me enteré de que a otros choferes se les pagaba montos similares a los que yo recibía. Cada uno de ellos me dijo que nunca les pagaron horas extras.

Declaro bajo pena por perjurio que lo dicho anteriormente es verdadero y correcto.

Firma PRIMITIVO. AGUILAR - F

Ejecutado el 10/13/2011 en Queens, Nueva York.

EXHIBIT "E"

EXHIBIT 11

PVO Ticket Details

Page 1 of 1

[Back to NYCServ](#) [The Official New York City Web Site](#)

Check Parking Ticket Status | Ticket Details

Vehicle Details

Plate:	63977JS	Type:	Commercial Vehicle
State:	New York	Make:	MITSU

Ticket Details as of Monday, Apr. 19, 2010 04:36 PM

Ticket #:	7923297265	Fine:	\$ 65.00
Issued On:	04/10/09 09:16 AM	Penalty:	+\$ 0.00
Ticket Code:	42	Interest:	+\$ 0.00
Description:	EXPIRED MUNI METER-COMM METER ZONE	Reduction:	-\$ 0.00
Location:	At the intersection of S 40FT W/OB BROADWAY Manhattan	Paid:	-\$ 65.00
		Balance:	\$ 0.00

[CANCEL](#)
[SEARCH FOR PARKING TICKETS](#)

Go to [NYC.gov Home](#) | [Finance Home](#) | [Health](#) | [Consumer Affairs](#) | [Environmental Protection](#) | [Contact Us](#) |
[FAQs](#) | [Privacy Statement](#) | [Site Map](#) | [Search](#)

Copyright © 2001 New York City D.O.F. All rights reserved. - [Contact NYCServ](#) (A new window will open)

DEF. 00137

PVD Ticket Details

Page 1 of 1

[Back to NYC Serv](#) *The Official New York City Web Site*

Check Parking Ticket Status | Ticket Details

Vehicle Details

Plate:	63977JS	Type:	Commercial Vehicle
State:	New York	Make:	MITSU

Ticket Details as of Monday, Apr. 19, 2010 04:43 PM

Ticket #:	7871762230	Fine:	\$	115.00
Issued On:	12/24/09 09:42 AM	Penalty:	+\$	0.00
Ticket Code:	14	Interest:	+\$	0.00
Description:	NO STANDING-DAY/TIME LIMITS	Reduction:	-\$	0.00
Location:	In front of 40 W 23RD ST Manhattan	Paid:	-\$	115.00
		Balance:	\$	0.00

[CANCEL](#)
[SEARCH FOR PARKING TICKETS](#)

Go to [NYC.gov Home](#) | [Finance Home](#) | [Health](#) | [Consumer Affairs](#) | [Environmental Protection](#) | [Contact Us](#) | [FAQs](#) | [Privacy Statement](#) | [Site Map](#) | [Search](#)

Copyright © 2001 New York City D.O.F. All rights reserved - [Contact NYC Serv](#) (A new window will open)

DEF.00138

PVO Ticket Details

Page 1 of 1

[Back to NYC Serv](#) [The Official New York City Web Site](#)

Check Parking Ticket Status | Ticket Details

Vehicle Details

Plate:	63977JS	Type:	Commercial Vehicle
State:	New York	Make:	MITSU

Ticket Details as of Monday, Apr. 19, 2010 04:39 PM

Ticket #:	7878545390	Fine:	\$	65.00
Issued On:	05/01/09 10:38 AM	Penalty:	+\$	0.00
Ticket Code:	20	Interest:	+\$	0.00
Description:	NO PARKING-DAY/TIME LIMITS	Reduction:	-\$	0.00
Location:	In front of 755 2ND AVE Manhattan	Paid:	-\$	65.00
		Balance:	\$	0.00

[CANCEL](#)
[SEARCH FOR PARKING TICKETS](#)

Go to [NYC.gov Home](#) | [Finance Home](#) | [Health](#) | [Consumer Affairs](#) | [Environmental Protection](#) | [Contact Us](#) | [FAQs](#) | [Privacy Statement](#) | [Site Map](#) | [Search](#)

Copyright © 2001 New York City D O F. All rights reserved - [Contact NYC Serv](#) (A new window will open).

DEF.00139

[Back to NYCServ](#)  *The Official New York City Web Site*

Check Parking Ticket Status | Ticket Details

Vehicle Details

Plate:	63977JS	Type:	Commercial Vehicle
State:	New York	Make:	MITSU

Ticket Details as of Monday, Apr. 19, 2010 04:41 PM

Ticket #:	7265450139	Fine:	\$	115.00
Issued On:	10/21/09 01:16 PM	Penalty:	+\$	0.00
Ticket Code:	51	Interest:	+\$	0.00
Description:	SIDEWALK	Reduction:	-\$	0.00
Location:	In front of 80 FRANKLIN-PL Manhattan	Paid:	-\$	115.00
		Balance:	\$	0.00

CANCEL

SEARCH FOR PARKING TICKETS

Go to [NYC.gov Home](#) | [Finance Home](#) | [Health](#) | [Consumer Affairs](#) | [Environmental Protection](#) | [Contact Us](#) | [FAQs](#) | [Privacy Statement](#) | [Site Map](#) | [Search](#)

Copyright © 2001 New York City D.O.F. All rights reserved. - [Contact NYCServ](#) (A new window will open)

[Back to NYC Serv](#)[The Official New York City Web Site](#)**Check Parking Ticket Status | Ticket Details****Vehicle Details**

Plate:	63977JS	Type:	Commercial Vehicle
State:	New York	Make:	MITSU

Ticket Details as of Monday, Apr. 19, 2010 05:11 PM

Ticket #:	7729869974	Fine:	\$	115.00
Issued On:	12/07/09 12:58 PM	Penalty:	+\$	60.00
Ticket Code:	48	Interest:	+\$	0.00
Description:	BIKE LANE	Reduction:	-\$	0.00
Location:	Opposite of 270 5TH AVE Brooklyn	Paid:	-\$	0.00
		Balance:	\$	175.00

Ticket Status

Ticket is past due.

CANCEL**SEARCH FOR PARKING TICKETS**

Go to [NYC.gov Home](#) | [Finance Home](#) | [Health](#) | [Consumer Affairs](#) | [Environmental Protection](#) | [Contact Us](#) |
[FAQs](#) | [Privacy Statement](#) | [Site Map](#) | [Search](#)

Copyright © 2001 New York City D.O.F. All rights reserved - [Contact NYC Serv](#) (A new window will open)

Ticket Details

Page 1 of 1

Parking Tickets | Ticket Detail

Vehicle Details

Plate:	63977JS	Type:	Commercial Vehicle
State:	New York	Make:	MITSU

Ticket Details as of Monday, Apr. 19, 2010 04:28 PM

Ticket #:	7842542790	Fine:	\$	65.00
Issued On:	01/06/10 11:31 AM	Penalty:	+\$	0.00
Description:	EXPIRED MUNI METER-COMM METER ZONE	Interest:	+\$	0.00
Code:	42	Reduction:	- \$	0.00
Location:	In front of 174 5TH AVE Manhattan	Paid:	- \$	0.00
		Balance:	\$	65.00

Ticket Status



Hearing held: Guilty



Ticket is past due.

[Print](#)

DEF.00142

NYCServ Violation Copy Internet



7729869974

The City of New York
Notice of Parking Violation

THE CITY OF NEW YORK DEPARTMENT OF TRANSPORTATION (DOT) HAS THE HONOR TO ADVISE YOU THAT YOU HAVE BEEN NOTICED FOR A VIOLATION OF THE CITY OF NEW YORK TRAFFIC RULES. YOU WILL BE REQUIRED TO PAY A FINE FOR THIS VIOLATION. IF YOU DO NOT PAY THE FINE, YOUR VEHICLE WILL BE IMPOUNDED. IF YOU HAVE A PERMIT TO OPERATE YOUR VEHICLE, YOU WILL BE REQUIRED TO PROVIDE THE PERMIT NUMBER TO THE DOT. IF YOU DO NOT HAVE A PERMIT, YOU WILL BE REQUIRED TO PROVIDE YOUR VEHICLE IDENTIFICATION NUMBER (VIN) TO THE DOT. IF YOU HAVE A PERMIT, YOU WILL BE REQUIRED TO PROVIDE THE PERMIT NUMBER TO THE DOT. IF YOU DO NOT HAVE A PERMIT, YOU WILL BE REQUIRED TO PROVIDE YOUR VEHICLE IDENTIFICATION NUMBER (VIN) TO THE DOT. IF YOU HAVE A PERMIT, YOU WILL BE REQUIRED TO PROVIDE THE PERMIT NUMBER TO THE DOT. IF YOU DO NOT HAVE A PERMIT, YOU WILL BE REQUIRED TO PROVIDE YOUR VEHICLE IDENTIFICATION NUMBER (VIN) TO THE DOT.

Permit Displayed	Permit Number	Type
N/S	N/A	N/A

Name of the Operator if present, if not present
OWNER OF THE VEHICLE BEARING LICENSE

Plate	CD	Exp. Date	State	Plate Type
63977JS	NS	N/S-Miss	NY	COM
Make	Color	Year	Body Type	
MITS	WHT	N/S	DELV	

VIN #

THE OPERATOR AND OWNER OF THE ABOVE VEHICLE ARE CHARGED AS FOLLOWS

In Violation of Sect. 4-08 (Subject Below) of NYC Traffic Rules					
Bike Lane (e)(9)					
Place of Occurrence					
Opposite 270 5th Ave					
VC	Meter #	Operational	Limit	County	Pct.
48				K	078
Date/Time of Offense			Date/Time 1st Observed		
12/07/09 12:58 PM			N/A		

Complainant's Comments:

FINE AMOUNT: \$ 115.00

Agency	Command	Tax Reg #
TRAFFIC	T-301	346173

Complainant's Name

SYKES, S

Signature of Complainant

S Sykes

772986997-4

NYCServ Violation Copy

Internet



7842542790

The City of New York
Notice of Parking Violation

THE CITY DEPARTMENT OF FINANCE MUST RECEIVE YOUR ANSWER TO THIS NOTICE WITHIN 10 DAYS OF THE DATE OF THE OFFENSE TO AVOID THE IMPOSITION OF A \$100 FINE. IF YOU DO NOT ANSWER BY MAIL, THE JUDGE WILL FIND YOU GUILTY OF THE VIOLATION. IF YOU ANSWER BY MAIL, YOU WILL BE DEEMED AN ADVERSARY OF THE COURT. ADDITIONAL PENALTIES WILL BE CHARGED FOR A DEFERRED JUDGMENT. YOU MAY BE CHARGED WITH A VIOLATION OF THE VEHICLE AND TRAFFIC LAWS. IF YOU DO NOT ANSWER, YOU WILL BE CHARGED WITH A VIOLATION OF THE VEHICLE AND TRAFFIC LAWS.

Permit Displayed	Permit Number	Type
N/S	N/A	N/A

Name of the Operator, if present. If not present, OWNER OF THE VEHICLE BEARING LICENSE

Plate	CD	Exp. Date	State	Plate Type
63977JS	6	08/31/10	NY	COM
Make	Color	Year	Body Type	
MITO	WH	1997	DELV	

VIN #
JW6CCG1G4VL002526

THE OPERATOR AND OWNER OF THE ABOVE VEHICLE ARE CHARGED AS FOLLOWS.

In Violation of Sect. 4-08 (Subject Below) of NYC Traffic Rules
Exp Muni-Mtr Com Mtr Zn (h)(10)
DAYS/HR: EXCEPT Su/ 7 A- 7 P

Place of Occurrence
Front of 174 5th Ave

VC	Meter #	Operational	Limit	County	Pct.
42	145-7556	Y	3 Hr	NY	013

Date/Time of Offense	Date/Time 1st Observed
01/06/10 11:31 AM	N/A

Complainant's Comments.
receipt expired at 11 23am

FINE AMOUNT: \$ 65.00

Agency	Command	Tax Reg #
TRAFFIC	T-102	355450

Complainant's Name
CUNNINGHAM, O

Signature of Complainant
X *OHC*

784254279-0

EXHIBIT "F"

EXHIBIT 13

DAMAGES INFORMATION - MASTER LIST

Name	Position	Date	Pay Rate-weekly	Hourly Rate Claimed by Defendants	Actual Hourly Rate (40 hr workweek)	Actual Overtime Rate	Dates of Work	Hrs Worked/Day	Hours/Week	OT/Week
Richard Merino	Helper Driver	9/15/2004	\$360.00	\$6.00	\$9.00	\$13.50				
		6/16/2005	\$450.00	\$7.25	\$11.25	\$16.88				
		6/5/2006	\$480.00	\$7.75	\$12.00	\$18.00				
		6/8/2007	\$510.00	\$8.00	\$12.75	\$19.13				
		6/2/2008	\$530.00	\$8.25	\$13.25	\$19.88	6/2-6/6/2008	9		
								10.25		
								11		
								10.5		
								10.75	51.5	11.5
								10.75		
						6/14-6/18/2008	10.5			
							10.5			
							12.25			
							11			
							11			
							10.25	55.5	15.5	
							10.75			
							10.5			
							9.25			
							11.25	52	12	
							9.75			
							10.75			
							9.25			
							9.5			
							11.5	50.5	10.5	
							10.75			
							10.75			
							11.5	54	14	
							9.75			
							10.25			
							10.25			
							9.5			
							10.75			
							10.75	50.5	10.5	
							7/14-7/18/2008	10.75		
								10.75		
								10		
								10.75		
								11	53.25	13.25
								11.25		
								11.5		
								8		
								10.75		
								10.75		
								11		
								10.75		
								11.5		
								11.5		
								10.5		
								10.75	52.25	12.25
								11		
								11.5		
								10.5		
								7/28-8/1/2008		

8/4-8/8/2008	11.25		
	10.5	54.75	14.75
	11		
	10.75		
	10.75		
	11		
8/11-8/15/2008	11.25	54.75	14.75
	10.75		
	10.75		
	9.25		
	10.75		
	11		
8/18-8/22/2008	11.25	52.5	12.5
	11		
	11.25		
	11.25		
	11.5		
	10	55	15
	11		
8/24-8/29/2008	11.25		
	11.5		
	9.5		
	9.5		
	10.25	63	23
	8.5		
	11		
9/1-9/5/2008	11.75		
	11.25		
	10.25		
	9.5	52.75	12.75
	12		
	11.75		
	10.5		
	11	54.75	14.75
	11		
9/15-9/19/2008	11.75		
	11.5		
	12		
	11	57.25	17.25
	11.75		
	11.25		
	10.25		
	10.25	43.5	3.5
	10.75		
	9.75		
	9.75		
	9.5		
	9.25	49	9
	10		
	10.75		
	9.75		
	9.25		
10/13-10/17/2008			

10/20-10/24/2008	9.5 9.75 10.5 10.75 10.25 9.5 11.25 10.5 10 9.25 9.5 10.75 10.25 9.75 9 10.25 10 10 9.5 10 10 10.25 11	49.25	9.25
10/27-10/31/2008	10.5 10.75 10.25 9.5 11.25 10.5 10 9.25 9.5 10.75 10.25 9.75 9 10.25 10 10 9.5 10 10 10.25 11	50.75	10.75
11/3-11/7/2008	10.5 10.75 10.25 9.75 9 10.25 10 10 9.5 10 10 10.25 11	50.5	10.5
11/10-11/14/2008	10.25 10 10 9.5 10 10 10.25 11	50	10
11/17-11/21/2008	10.25 11 10 8.75 9.5 9.75 9.75 8.5 10.75 11	49.5	9.5
11/24-11/28/2008	9.75 9.75 9.75 8.5 10.75 11	49.5	9.5
12/1-12/5/2008	9.75 9.75 9.75 8.5 10.75 11	28	0
12/8-12/12/2008	9.75 9.75 9.75 8.5 10.75 11	50.5	10.5
12/15-12/19/2008	9.75 9.75 9.75 8.5 10.75 11	48	8
12/22-12/26/2008	9.75 9.75 9.75 8.5 10.75 11	50	10
12/29-1/2/2009	9.75 9.75 9.75 8.5 10.75 11	41.25	1.25

1/5-1/9/2009	9.5	38.5	0
	9.75		
	9.25		
	9.5		
	9.75		
1/12-1/16/2009	8	46.25	6.25
	10.75		
	11		
	10.25		
	10		
	9.5	51.5	11.5
1/19-1/23/2009	8.25		
	9.75		
	10		
	10.25		
1/26-1/30/2009	10	48.25	8.25
	9		
	11.5		
	10		
	9.25		
2/2-2/6/2009	9.5	49.25	9.25
	10		
	9.5		
	9.25		
	9.25		
2/9-2/13/2009	8.75	46.75	6.75
	10.25		
	10		
	10		
	10		
2/16-2/20/2009	10	50.25	10.25
	9.75		
	11.5		
	9.75		
	9.5		
2/23-2/27/2009	9.25	49.75	9.75
	9.25		
	10.5		
	10.25		
	9.5		
	9.5	49	9
3/2-3/6/2009	10.5		
	10.5		
	10		
	9.25		
	9.5	49.75	9.75
3/9-3/13/2009	10.5		
	10.5		
	9.75		
	10		
	9.5	50.25	10.25

	3/16-3/20/2009	10			
		11			
		10			
		10			
	3/23-3/27/2009	9.5	41	1	
		10.5			
		9.75			
		10			
		8.5			
	3/30-4/3/2009	9.75	48.5	8.5	
		10			
		10.75			
		9.5			
		10.25			
		9.5	50	10	
	4/6-4/10/2009	10.25			
		10			
		9.75			
		9.5			
		9.5	49	9	
	4/13-4/17/2009	9.5			
		9.75			
		9.5			
	4/20-4/24/2009	9.5	38.25	0	
		10.25			
		10.5			
		10.5			
		10.25			
		9.5	51	11	456.5
2/19/2010	2/15-2/19/2010	10			
		10.5			
		11			
		10.25			
	2/22-2/25/10	10	51.75	11.75	
		10			
		10.25			
		10.5			
		10	50.75	8.75	
	3/1-3/5/10	10.5			
		10			
		10			
		10			
		9.75	50.25	10.25	
	3/8-3/12/2010	10			
		10			
		10			
		10			
		10.25	50.25	10.25	

Driver	Date	Rate	Hours	Amount	Notes
Dany Cux Batan	6/22/2005	\$360.00	\$6.25	\$9.00	\$13.50
Helper	8/22/2005	\$380.00	\$6.50	\$9.50	\$14.25
	8/28/2006	\$400.00	\$6.75	\$10.00	\$15.00
Elias Hernandez	7/11/2008	\$480.00	\$7.75	\$12.00	\$18.00
Jorge Orea Paaz	1/2/2007	\$450.00	\$7.25	\$11.25	\$16.88
Driver	4/2/2007	\$480.00	\$7.75	\$12.00	\$18.00
	4/7/2008	\$500.00	\$7.75	\$12.50	\$18.75
	6/2/2008	\$530.00	\$8.25	\$13.25	\$19.88
					6/2-6/6/2008
			9.5		
			10.25		
			10.25		
			9.75		
			10.5		
			10.75		
			10.5		
			11.5		
			12		
			8.75		
			11		
			10.75		
			10.5		
			10.25		
			9.25		
			9.5		
			10		
			9.75		
			9		
			11		
			11.75		
			10.5		
			10.5		
			9.5		
			9.5		
			9.5		
			10.5		
			10.75		
			10		
			9.5		
			9.5		
			10.75		
			11		
			10.25		
			10.75		
			9.5		
			11		
			10.5		
			11		
			9.5		
			52.25		
			7/28-8/1/2008		
			11		
			10.5		
			11		
			9.5		
			42		

8/4-8/8/2008	10.75	
	10.5	
	10.25	
	11	
	9.5	S2
8/11-8/15/2008	10.75	
	10.75	
	9.25	
	10.5	
	11	
8/18-8/22/2008	11.25	52.25
	11	
	11.25	
	11.25	
	9.5	54.25
8/29/2008	11	
	11	
	11	
	10.25	43.25
9/1-9/5/2008	8.5	
	11	
	11.75	
	11	
	10.25	52.5
9/8-9/12/2008	9.5	
	11.75	
	11.5	
	10.5	
	9.5	52.75
9/16-9/19/2008	11.5	
	11.75	
	12	
	9.5	44.75
9/23-9/26/2008	11.5	
	11.25	
	10.25	
	9.5	42.5
10/3/2008	9.5	9.5
10/17/2008	9.75	
	10.75	
	9.75	
	9.5	
	9.5	49.25
10/24/2008	11	
10/27-10/31/2008	13.5	
	9.5	
	9.5	43.5
11/3-11/7/2008	11.5	
	10.25	
	9.5	

					2/2-2/6/2009	10 9.25 9.5 9.25 8.5 10.5 10 9.75 10 9.75 10 9.25 9.5 9	46.5
					2/16-2/20/2009	40.25	
					2/23-2/27/2009	47.5	
					2/15-2/19/2010	41.5	
					2/22-2/26/2010	38.5	
					3/1-3/5/2010	48.75	
					3/8-3/12/2010	50	
					3/15-3/19/2010	60.75	
					3/22-3/26/2010	54.25	
					3/29-4/2/2010	50	
Arnolfo Grande	Driver	9/2/2009 2/19/2010	\$480.00	\$8.25 \$8.75			

7/7-7/11/2008	9.5 9.75 10.25 10.25 9.5	41
7/14-7/18/2008	9.5 10.5 10.75 10 10.5 9.5 11	49.25
7/21-7/25/2008	11.25 10.5 10.75 9.5 11 11.5 10.5 10.75	51.25
7/28-8/1/2008	53 9.5 11 11.5 10.5 11	53
8/11-8/15/2008	53.5 9.5 10.75 10.75 9.25 10.5 9.5 11.25 11	50.75
8/18-8/22/2008	11.25 11 11.25 11.5 9.5 8.5 11 11.5 11.25 9.5	54.5
9/1-9/5/2008	54.5 8.5 11 11.5 11.25 9.5 11.25 12.25 11.75 10.5 9.5	51.75
9/8-9/12/2008	51.75 12.25 11.75 11.75 10.5 9.5 11.25 11.5 11.75 9.5 11.75 12.25 12.75 9.5	55.75
9/15-9/19/2008	55.75 11.25 11.5 11.75 11.75 9.5 11.75 12.25 12.75 9.5	55.75
9/22-9/26/2008	55.75 12.25 12.75 9.5	55.75

	9.5	
	9.5	
	9.75	47.75
1/12-1/16/2009	10.75	
	11	
	10.25	
	10	
	9.5	51.5
1/19-1/23/2009	8.5	
	9.5	
	10	
	10.25	
1/26-1/30/2009	10	48.25
	9	
	9.75	
	9.75	
	9.25	
	9.5	47.25
2/2-2/6/2009	10	
	9.25	
	9.5	
	9	
	9.5	47.25
2/9-2/13/2009	10.5	
	10	
	10	
	10	
	9.5	50
2/16-2/20/2009	9.75	
	10	
	9.25	
	9.5	
	9.5	48
2/23-2/27/2009	9	
	10.5	
	10.25	
	9.5	
	9.5	48.75
3/2-3/6/2009	13.5	
	9.5	
	10	
	9.25	
	9.5	51.75
3/9-3/13/2009	10.5	
	10.5	
	9.5	
	10	
	9.5	50
3/16-3/20/2009	9.75	
	11	
	10	

					4/19-4/23/2010	10	51.5
						10	
						10.5	
						10	
						10.5	
					4/26-4/30/2010	10.25	51.25
						9.75	
						10.5	
						10	
						10	
					5/3-5/7/2010	10.75	51
						11	
						11.5	
						11	
						10.5	
					5/10-5/14/2010	10.75	54.75
						10.5	
						10.5	
						10.5	
						10	
					5/17-5/21/2010	10.25	51.75
						10.5	
						10.5	
						10	
						10.5	
					5/24-5/28/2010	10.75	52.25
						10.5	
						10.5	
						10.75	
						11	
						10	
					5/31-6/4/2010	8.25	52.75
						11	
						11	
						11	
						11	
						11	52.25
Jesus Mantilla	6/14/2004	\$380.00	\$6.50	\$9.50	\$14.25		
	1/3/2005	\$400.00	\$7.00	\$10.00	\$15.00	9.5	
	3/31/2009	\$420.00	\$7.25	\$10.50	\$15.75	9.5	
					4/13-4/17/2009	11.75	
						9.5	
						11.75	
						9.5	
						9.5	49.75
					4/20-4/24/2009	10.25	
						10.5	
						9.5	
						11.5	
						9.5	51.25
Costas Gabriel	2/1/2005	\$450.00		\$7.25			
	5/2/2005	\$475.00		\$7.50			

Justino Cuenca	Driver	2/9/2005 6/13/2005	\$450.00 \$480.00		\$7.25 \$7.50			
Vazquez Herrera Bernardo	Driver	6/6/2005 9/5/2005 8/7/2006 1/22/2007	\$475.00 \$500.00 \$520.00 \$540.00	\$7.50 \$8.00 \$8.25 \$8.50	\$11.88 \$12.50 \$13.00 \$13.50	\$17.81 \$18.75 \$19.50 \$20.25		
Jose Antonio Hernandez	Helper	6/20/2005	\$380.00		\$6.75			
Paulo G. Morales	Driver	9/20/2006	\$480.00	\$7.50	\$12.00	\$18.00		
Raul Soto	Helper	6/26/2006 10/30/2006 2/19/2007	\$400.00 \$420.00 \$440.00		\$6.75 \$7.25 \$7.50			
Norberto D.R.	Driver	1/12/2009	\$450.00		\$7.50			
						1/19-1/23/2009 1/26-1/30/2009	9.5 9	9.5
							9.75 10 9.25 9.5 10 9.5	
						2/2-2/6/2009	10 9.5	47.5
							9.5 9.25 8.5 10.25 9.5	46.75
						2/9-2/13/2009	9.5 9.75 10 9.5 9.5	49
						2/16-2/20/2009	9.5 9.5 9.5	
							9.5 9.5 10.25 10 9.5	28.5
						3/12-3/16/2009	10.25 10 9.5 9.5	
							10.5 9.75 10 9.5 9.75 11 10	39.25
						3/9-3/13/2009	10.5 9.75 10 9.5 9.75	50.25
							9.75 11 10 9.75	
						3/16-3/20/2009	9.75 11 10 9.75	40.5
							9.75 9.75	
						3/23-3/27/2009 3/30-4/3/2009	9.75 9.75	

						4/6-4/10/2009	10.75 9.25 10.25 9.5 10 9.75 9.75 9.5 8.5	49.5
						5/6/2009		
Alberto Rios	Helper	4/13/2009	\$380.00	\$7.25				
Adrian Rodriguez	Driver	8/21/2009	\$480.00	\$7.50				
Rafael						6/2-6/6/2008	9.25 11.75 12.5 9.5 9.5 9.5 11 13.75 13 12.5 11.75 12.75 11.5 11.25 13 6.75 11.25 11 11.25 13.5 12.5 12.75 11.75 9.5 11.75 11.25 13 9.5	52.5
						6/9-6/13/2008		
						6/16-6/20/2008		59.75
						6/23-6/27/2008		60.25
						7/3/2008		29
						7/7-7/11/2008		50
						7/14-7/18/2008		57.25
						7/21-7/25/2008		52.5
							9.5 11 12	

	12	
	12.25	
7/28-8/1/2008	12.5	56.75
	13.25	
	12.5	
	12.75	
	12.25	63.25
8/1-8/15/2008	11.75	
	12	
	9	
	11.75	
	12.5	57
8/18-8/22/2008	12.25	
	12	
	12.5	
	13	
8/25-8/29/2008	11.5	61.25
	11.25	
	12.25	
	12.25	
	9.5	
	9.5	
9/1-9/5/2008	8.5	54.75
	12	
	12.5	
	12.25	45.25
9/8-9/12/2008	13.75	
	13.5	
	13.25	
	12.5	
	12.5	
9/15-9/19/2008	9.5	62.5
	12.75	
	13	
	13	
	13	
9/22-9/26/2008	12	63.75
	10	
	12.5	
	11.5	
9/29-10/3/2008	9.5	43.5
	12.75	
	11.25	
	11.25	
	11.5	
10/13-10/17/2008	11.25	58
	12	
	10.5	
	10	
10/20-10/24/2008	10.75	54.5
	11.25	

10/27-10/31/2008	11 11.75 11.25 11.5 10.5 9.5 9.25 10.5 11.25 12	56.75
11/3-11/7/2008	11.75 9.5 9.5 9.5 10 12	51
11/10-11/14/2008	11.75 9.5 9.5 9.5 10 12	52.25
11/17-11/21/2008	10.5 11.5 11.25 11.75 12.5 11.25 9.75 9.5 10 11.25 9.75	55.25
11/24-11/28/2008	54.75 10 11.25 9.75 12	31
12/1-12/5/2008	12 11.25 10.75 12.75 9.75 11 10.25 9.5 11.75 12	46
12/8-12/12/2008		
12/15-12/19/2008		53.25
12/22-12/26/2008	11 10.75 9.5 11.5 9.5 10.75 9.5 10.25 11.25 10.25 10 9.75 10.25	55
12/29-1/2/2009		41.25
1/5-1/9/2009		41.75

	11.25	
	9.5	
1/12-1/16/2009	11.75	50.25
	12.25	
	11.5	
	11	
1/19-1/23/2009	9.5	56
	9.5	
	10.5	
	11.75	
1/26-1/30/2009	11	42.75
	10	
	9.5	
	11.25	
	11	
	9.5	
2/2-2/6/2009	10.25	51.25
	11	
	11	
	11	
2/9-2/13/2009	10	53.25
	12	
	11.5	
	11.25	
	11.5	
2/16-2/20/2009	9.75	46.25
	11.25	
	11	
	11	
	10.5	
2/23-2/27/2009	10.75	53.5
	12	
	11.5	
	10.75	
	9.5	
3/2-3/6/2009	11.75	54.5
	11.75	
	11.5	
	11.5	
	10.5	
3/9-3/13/2009		57
3/23-3/27/2009	11.75	
	11.25	
	11.25	
	9.5	
	11	
3/30-4/3/2009	10.75	54.75
	12.25	
	11.25	
	11	

Pablo

5/10-5/14/2010	11.5 10.75 11.75 11 11 11	60.25
5/17-5/21/2010	11.75 11.25 10.75 11.25 12 10.5	55.5
5/24-5/28/2010	11.25 11.25 11.25 12.25 10.75 9	57
5/31-6/4/2010	11.75 10.75 12.25 11.25	56
6/2-6/6/2008	11.25 10.25 9.5 10.25 11.5 10.75 10.5 12.25 10.75 10.75 10.75 10.5	55
6/18/2008	11.25 10.25 9.5 10.25 11.5 10.75 10.5	52.75
6/20/2008	10.5 10.5 9.25 11.25 9.25 9.5 9.25 11.5 9	55
6/23-6/27/2008	10.75 10.5 9.25 11.25 9.25 9.5 9.25 11.5 9	52.25
7/3/2008	10.75 11.5 10.5 10.5 11.5 10.5 10.75 10.25 8.75 10.75	48.5
7/7-7/11/2008	44.25	44.25
7/14-7/18/2008	40.25	40.25

Santoniolo

7/21-7/25/2008

9.5
7.259.5
9.5

46.5

7/28-8/1/2008

9.5
11

49

8/11-8/15/2008

9.5
10.25

44.5

8/18-8/22/2008

11
11.25

52.25

8/25-8/29/2008

11
11.25

54.25

9/1-9/5/2008

11
11

52.75

9/8-9/12/2008

10.25
9.5

51.75

9/15-9/19/2008

8.5
11

52.75

9/21-9/26/2008

11.75
11.5

56

10/3/2008

10.5
11.5

34.5

8/1/2008

10.5
11

31

	8/4-8/8/2008	11 10.5 10.5 11	43
Antonio	8/11-8/15/2008	10.75 10.75 9.25 10.5 9.5 11.25 11	50.75
	8/18-8/22/2008	11.25 11 11.25 11.5 9.5 10.75	54.5
Alex	8/11-8/15/2008	10.75 10.75 9.25 10.75 9.5 11.25 10.75 9.75	51
	8/18-8/22/2008	11.25 10.75 9.75	31.75
Heraldo	8/29/2008	11 10.5 9.5	31
Geraldo	9/12/2008	12 11.5 11.5 10.25 9.5	54.75
	9/19/2008		
Victor	10/27-10/31/2008	9.5 11 9.75 9.5 10.75 10.25 9.5 9.25 9.5 9.5 9.25 9.25	39.75
	11/3-11/7/2008		
	12/8-12/12/2008		49.25
Galberto	11/10-11/14/2008	9 10 10.25 9.25	37

Ramirez	3/9-3/13/2009	9.5 10	49
		10.5 9.5 9.5 10 9.5	
Cesar	3/16-3/20/2009	11 11 10 10.25 9.5	49
Neira	2/15-2/19/2010	10.5 10 10 10.25 10	20.5
	2/22-2/26/2010	10.25 10 8	38.25
Edgar	2/15-2/19/2010	10.25 10.5 10.75 10.25 10.25	52
Tony	7/18/2008 7/25/2008	9.5 9.5 9.5 9.5 10 11.5 10.25 11.25 10.25 11 10.5 10.5 10.75 9.5 10.5 10.5 9 11 11.25 11	47.5
	7/28-8/1/2008		
	8/4-8/8/2008		53.25
	8/11-8/15/2008		52.25
	8/18-8/22/2008		51.5

8/25-8/29/2008	11.25 11.5 9.5 11 11	54.5
9/1-9/5/2008	11.25 10.25 9.5 8.25 11.5 11 9.5 11.5	53
9/8-9/12/2008	11.5 9.5 11.5 9.5 11.75 10.25 9.5 11.25 9.5	40.25
9/15-9/19/2008	12.75 12.5 12.5 9.5 11.5 11.25 9.5	52.5
9/22-9/26/2008	11.5 11.5 11 10 10.75 8.25 9.5 9.5 9.5 9.5	68
9/29-10/3/2008	10.75 8.25 9.5 9.5 9.5 9.5	44
10/17/2008	10.75 9.5 9.5 9.5 9.5	47.5
10/24/2008	9.5 9.5 9.5 9.5 9.5 9.5 9.5 9.5 9.5 9.5	39.25
10/27-10/31/2008	11.25 9.75 9.5 9.5 9.5 9.5 9.5 9.5 9.5 9.5	38
11/3-11/7/2008	9.5 9.5 9.5 9.5 9.5 9.5 9.5 9.5 9.5 9.5	40
11/10-11/14/2008	9.5 9.75 9.75 9.5	38

	9.5	
	9.5	48
11/17-11/21/2008	10.5	
	10.75	
	9.75	
	8.5	
	9.75	49.25
11/24-11/28/2008	8.75	
	9.75	
	9.5	28
12/1-12/5/2008	9.5	
	9.5	
	9.5	28.5
12/8-12/12/2008	9.5	
	9.25	
	9.5	
	11.5	
	9.5	49.25
12/15-12/19/2008	10	
	10.75	
	9.5	
	9.25	
	9.5	49
12/22-12/26/2008	9.5	
	9.5	
	11.45	30.45
12/29-1/2/2009	9.5	
	10	
	8.75	
	8.5	36.75
1/5-1/9/2009	9.25	
	9.5	
	9.25	
	9.5	37.5
1/12-1/16/2009		

10.35064189 hrs/day for recorded days

752 days over 10 of 1480 days

EXHIBIT "G"

EXHIBIT 24

Page 1

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 ECF CASE
5 10 Civ. 0706 (JSR)

6 - - - - -x
7 RICHARD MERINO, DANY CUX BATEN, ELIAS
8 ANTONIO HERNANDEZ, and JORGE OREA PAEZ,
9 individually and on behalf of all others
10 similarly situated,,
11

12 Plaintiffs,

13 -against-

14 BEVERAGE PLUS AMERICA CORP., SMC USA
15 CORP., YUN S. CHO, GRAND BEVERAGE CORP.
16 and YUN C. CHO,,
17

18 Defendants.
19 - - - - -x

20 500 Pearl Street
21 New York, New York
22

23 June 28, 2010
24 11:24 a.m.
25

DEPOSITION of YUN S. CHO, a Defendant in the
above-entitled action, held at the above time and
place, taken before Kim Auslander, Registered
Professional Reporter and Notary Public of the
State of New York, pursuant to the Federal Rules
of Civil Procedure.

* * *

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

1
2 APPEARANCES:
3

4 VLADECK, WALDMAN, ELIAS & ENGELHARD, PC

Attorneys for Plaintiffs

1501 Broadway

5 New York, NY 10036

BY: ANAND SWAMINATHAN, ESQ.

6 MAIA B. GOODELL, ESQ.
7

YUN S. CHO

8 Pro Se Defendant

5887 55th Street

9 Maspeth, NY 11378
10
11

ALSO PRESENT: JULIE WANG;

12 VLADECK, WALDMAN, ELIAS & ENGELHARD, PC,

13 YUN C. CHO
14

* * *

1 Y. S. CHO

2 Looking again at Plaintiff's
3 Exhibit 7, just for the record, that
4 document is Bates stamped in the bottom
5 right-hand corner, it says Defendant's 1.

6 These are documents that were
7 provided to plaintiffs by defendants, and we
8 created a version of these documents just
9 with a stamp in the bottom corner for ease
10 of use. This is Defendant's 1.

11 A. Okay.

12 Q. Looking at this document,
13 whose handwriting is on this document?

14 A. This is my handwriting.

15 Q. Just generally, this document
16 is for Mr. Richard Merino?

17 A. Yes.

18 Q. Generally speaking, not just
19 looking at Richard, but for all employees
20 in relation to when they were hired, when
21 was this document created?

22 A. It varies. After I hired
23 them, some people I just made this
24 personnel record very next day or some are
25 made about a week later.

1 Y. S. CHO

2 Q. Why are some made the next day
3 and some are made a week later?

4 A. Because certain people willing
5 to work but they don't last a couple of
6 days.

7 Q. How often did that happen,
8 that an employee would only work a couple
9 of days?

10 A. If I hire somebody, chances
11 are about 80 percent of people I hired not
12 going to last a couple of days -- I mean
13 didn't last a couple of days.

14 Q. Just so I understand clearly,
15 almost 80 percent of the time people would
16 only last a few days?

17 A. Yes.

18 Q. So it was somewhat rare that
19 employees stayed on for a long period of
20 time?

21 A. Yes.

22 Q. The employees who only lasted
23 a couple of days, can you say approximately
24 how many days these employees would be
25 there; would it be one day, five days? An

1 Y. S. CHO

2 approximation.

3 A. One day or two days. Once
4 they decide they couldn't do this work they
5 just quit.

6 Q. Why did employees leave after
7 just a couple of days?

8 A. It's too hard.

9 Q. Is that what they told you?

10 A. Yes.

11 Q. Any other reasons you were
12 given for why people were quitting after a
13 few days?

14 A. Some people got into accident
15 and didn't tell me about it and just left.

16 Q. Did that happen often or was
17 that a rare sort of thing or something
18 else?

19 A. It was one of the reasons they
20 work only a couple of days. Some people
21 say they are really hard work so they can't
22 keep up with it. Some guys do bad thing
23 and just left.

24 Q. Any other reasons that people
25 would give you for quitting after a very

1 Y. S. CHO

2 amount?

3 A. No.

4 Q. So you said 2004 you made
5 reference to \$360 per week. Was that the
6 fixed amount for drivers?

7 A. No. It's for the helpers.

8 Q. What was the amount for
9 drivers?

10 A. \$450.

11 Q. This is in 2004?

12 A. Yes.

13 Q. Then were they always paid
14 that exact same amount every week, \$360 or
15 \$450 per week?

16 A. Yes, and after a few months if
17 they were good I gave them raise.

18 Q. The \$360 per week or the \$450
19 per week, for how many hours of work was
20 that paid?

21 A. It depends, because in
22 beverage business there's a big difference
23 doing work summertime and wintertime.

24 For example, let's say I paid
25 for more than 60 hours a day -- I mean 60

1 Y. S. CHO

2 hours a week during the summertime, they
3 work less than 40 hours in wintertime so
4 almost about 20 hours in difference.

5 Q. So just give me a sense. What
6 were the hours generally -- let me ask you
7 this first; were the hours for drivers and
8 helpers the same or were they different?

9 A. Same. They come the same time
10 and leave at the same time.

11 Q. Okay. So in the summertime
12 approximately what were the hours of the
13 drivers and helpers?

14 A. Between 55 to 60, 62 or 63 --
15 63 hours. No, no, no. I'm sorry. It's
16 with the overtime.

17 For your understanding, 40
18 hours is regular hours and on top of that
19 during the summertime they work about 10 to
20 13 hours more.

21 Q. In the summer they work 10 to
22 13 hours more than 40 hours?

23 A. Yes.

24 Q. So between 50 and 53 hours?

25 A. Yes. The hours I mentioned

1 Y. S. CHO

2 Q. The calculation that you just
3 described to me where you take their hours,
4 the calculation you described to me in the
5 remarks section, was that something you
6 ever discussed with the workers?

7 A. No, because they already
8 agreed to fixed amount of money.

9 Q. Did you ever have discussions
10 with the workers about overtime pay?

11 A. No.

12 MR. SWAMINATHAN: Why don't we
13 take a break.

14 (A lunch recess was taken.)

15 Q. Are you ready?

16 A. Yes.

17 Q. We are back from a lunch
18 break. Do you understand you continue to
19 be under oath currently?

20 A. Yes, I do.

21 Q. I want to follow up on a few
22 issues from the morning.

23 You said that some documents
24 were destroyed in April when they were --
25 after they were taken from the offices?

Page 217

1 Y. S. CHO

2 Q. Did you talk to them about
3 overtime?

4 A. No.

5 Q. When you spoke to the workers
6 about their wages, was there anything put
7 in writing?

8 A. No.

9 Q. Was anything put in writing
10 based on your interviews with workers?

11 A. No.

12 Q. If your interview had gone
13 well, would you hire them right away?
14 Would you call them back later? What would
15 you do next?

16 A. I would tell them to come next
17 day or next Monday.

18 Q. Would you have them fill out
19 any forms or anything?

20 A. No, not at that time, because
21 they might just quit or don't show up next
22 day or following Monday.

23 Q. Is there some point where you
24 would have them fill out some information?

25 A. Yeah. I mentioned earlier,

1 Y. S. CHO

2 ridiculous.

3 Q. You've talked about your
4 discussions with workers about their wages.

5 Have you taken any steps to
6 ensure that the wages that you pay your
7 employees are in compliance with the law?

8 A. Just I explained how many
9 hours he's going to work, I explained to
10 them, and how much I'm going to pay.

11 Also I mention if you get this
12 much money for this time you are working
13 then it will be approximately how much for
14 hour. I explain to all the guys.

15 Q. Other than your conversations
16 with the workers about how you were going
17 to pay them and how much you were going to
18 pay them and how many hours they would work
19 for that pay, did you take any steps to
20 ensure that whether or not you were
21 agreeing to with the workers was in
22 compliance with the law?

23 A. I believe I complied with the
24 law, because I never paid less than minimum
25 wage or overtime, I always calculate those

1 Y. S. CHO

2 things I have to pay.

3 That's why I explained all
4 those things to my guys when I have
5 interview with them.

6 Q. I understand that you are
7 saying now that you believe you were in
8 compliance. What steps did you take in
9 order to ensure that you were in
10 compliance?

11 A. What do you mean by what
12 steps?

13 I told you before, I explained
14 how many hours he's going to work for the
15 pay.

16 Q. Right. I'm not talking about
17 your conversations with the workers. I am
18 asking you, did you have any conversations
19 with anyone other than the workers to
20 ensure that whatever wage policies you had
21 with your workers were in compliance with
22 the law.

23 A. No. Who should I talk to?

24 No.

25 Q. Did you ever speak to any

YUN S. CHO

Page 268

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 ECF CASE
5 10 Civ. 0706 (JSR)

6 - - - - -x
7 RICHARD MERINO, DANY CUX BATEN, ELIAS
8 ANTONIO HERNANDEZ, and JORGE OREA PAEZ,
9 individually and on behalf of all others
10 similarly situated,,
11

12 Plaintiffs,

13 -against-

14 BEVERAGE PLUS AMERICA CORP., SMC USA
15 CORP., YUN S. CHO, GRAND BEVERAGE CORP.
16 and YUN C. CHO,,
17

18 Defendants.
19 - - - - -x
20

21 500 Pearl Street
22 New York, New York
23

24 June 29, 2010
25 11:24 a.m.

1 CONTINUED DEPOSITION of YUN S. CHO, a Defendant
2 in the above-entitled action, held at the above time
3 and place, taken before Kim Auslander, Registered
4 Professional Reporter and Notary Public of the State
5 of New York, pursuant to the Federal Rules of Civil
6 Procedure.
7

8 * * *

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

YUN S. CHO

Page 269

1
2 APPEARANCES:

3
4 VLADECK, WALDMAN, ELIAS & ENGELHARD, PC

Attorneys for Plaintiffs

1501 Broadway

5 New York, NY 10036

BY: ANAND SWAMINATHAN, ESQ.

6 MAIA GOODELL, ESQ.

7
8 YUN S. CHO

Pro Se Defendant

5887 55th Street

9 Maspeth, NY 11378

10
11 ALSO PRESENT: JULIE WANG;

12 VLADECK, WALDMAN, ELIAS & ENGELHARD, PC

13
14 * * *

YUN S. CHO

Page 296

1

2 they shouldn't go there but sometimes they
3 do, or red lights or speeding, those are
4 moving violations.

5 Q. In those instances you said
6 the driver is liable?

7 A. Yeah, of course.

8 Q. So because the driver was
9 liable that's why you would have them pay
10 the tickets?

11 A. Yeah. Richard Merino gets
12 various moving violations. He went through
13 the area that he shouldn't go.

14 There's so many places you
15 shouldn't go with the trucks unless there's
16 a local delivery.

17 Q. What about would they also be
18 liable when it was a parking ticket?

19 A. No.

20 Q. Why do you say that the driver
21 is not liable when it is a parking ticket?

22 A. Only reason I told them if you
23 get a parking violation -- there's so many
24 different park violations, there's various
25 ways of parking violation. For example, if

YUN S. CHO

Page 297

1
2 they double-parked but depends on area, if
3 you park the truck uptown or downtown it's
4 okay, it's legal to double-park if there is
5 no parking space, but midtown you can't.
6 You can't double-park at all, no matter
7 what. You have to find a parking space.

8 But when those guys get a
9 double-parking ticket, I take care of it. I
10 try to send a letter to plead not guilty.
11 Also traffic lane ticket, it's okay, the
12 same as a double-parking ticket.

13 But when driver go through the
14 prohibited area, like a fire hydrant, bus
15 lane or crossing, bike lane, those areas
16 they shouldn't be there. They don't have to
17 be there.

18 Q. Those things you described;
19 fire hydrants, bus lanes and so on, those
20 were moving violations or parking
21 violations?

22 A. Parking violations.

23 Q. In those instances where they
24 were parking by a bus lane or fire hydrant
25 and they got a ticket would you take

YUN S. CHO

Page 298

1

2 deductions for those?

3

A. No, I didn't. I keep saying
4 if you do the violation, next time I will
5 deduct the money, but I never did.

6

Q. So even though in those cases
7 it was also their fault, when they parked
8 when there was no double-parking in midtown
9 or when they parked in front of a fire
10 hydrant or bus lane, in those instances you
11 would say it was their fault, they were
12 liable, right?

13

A. Yeah, of course. They don't
14 have to go to bus lane. Why they stop
15 their truck on bus lane? Bus stops or fire
16 hydrant, why they have to block fire
17 hydrant or block crossings? They don't
18 have to do that.

19

Q. When they did that, when they
20 parked in these places, when they didn't
21 need to go there and park in those places,
22 would you take deductions from them?

23

A. What do you mean?

24

Q. Would you take deductions in
25 their paychecks in those instances?

Page 1

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 ECF CASE
5 10 Civ. 0706 (JSR)

6 - - - - -x
7 RICHARD MERINO, DANY CUX BATEN, ELIAS
8 ANTONIO HERNANDEZ, and JORGE OREA PAEZ,
9 individually and on behalf of all others
10 similarly situated,,
11

12 Plaintiffs,

13 -against-

14 BEVERAGE PLUS AMERICA CORP., SMC USA
15 CORP., YUN S. CHO, GRAND BEVERAGE CORP.
16 and YUN C. CHO,,
17

18 Defendants.
19 - - - - -x
20

21 500 Pearl Street
22 New York, New York
23

24 June 24, 2010
25 9:00 a.m.

DEPOSITION of YUN C. CHO, a Defendant in the
above-entitled action, held at the above time and
place, taken before Kim Auslander, Registered
Professional Reporter and Notary Public of the State
of New York, pursuant to the Federal Rules of Civil
Procedure.

* * *

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

1
2 APPEARANCES:
3

4 VLADECK, WALDMAN, ELIAS & ENGELHARD, PC

5 Attorneys for Plaintiffs

1501 Broadway

6 New York, NY 10036

7 BY: MAIA B. GOODELL, ESQ.

8 ANAND SWAMINATHAN, ESQ.

9 YUN C. CHO

10 Pro Se Defendant

11 5887 55th Street

12 Maspeth, NY 11378

13 ALSO PRESENT: EMILY ALDRIDGE;

14 VLADECK, WALDMAN, ELIAS & ENGELHARD, PC

15 * * *

Page 80

1 Y. C. CHO

2 him that.

3 Q. To your knowledge, there was
4 no practice of discussing overtime pay with
5 employees that were hired?

6 A. That's correct.

7 Q. And there still is not such a
8 practice?

9 A. No.

10 Q. Do you have any documents
11 reflecting agreements with any of the
12 workers at Beverage Plus about pay?

13 A. I think when I see --

14 (Pause.)

15 A. I have here --

16 Q. You are looking at a personnel
17 record?

18 A. I can see the defendant's
19 response to plaintiff's first set of
20 interrogatories.

21 At the time when I submit the
22 pieces of paper I attached on Exhibit B, I
23 put the time record with my employees.

24 Q. Other than the documents that
25 you attached in your responses to us, are

1 Y. C. CHO

2 A. My brother pays it at this
3 moment, because I don't know each figure,
4 so my brother controls for time card
5 payment.

6 Q. Is it your understanding that
7 the workers are currently paid on an hourly
8 basis, a weekly basis, something else?

9 A. They receive every week.
10 Weekly basis. They receive salary every
11 week.

12 Q. They are paid a salary every
13 week?

14 A. Yes.

15 Q. Do they receive compensation
16 for overtime?

17 A. Yes.

18 Q. How does that work? How do
19 you calculate --

20 A. The time card. As you can
21 see, the defendant's response to
22 plaintiff's first set of interrogatories, I
23 attach Exhibit B, the time card with the
24 amount of payment for weekly salary that
25 they have time cards, so I can see how many

1 Y. C. CHO

2 of product from the retailer and then how
3 to control the people and then about the
4 general information to run the business.

5 Q. It's your testimony that you
6 took over the business on March 13, the
7 date after Richard Merino was fired; is
8 that right?

9 A. Yeah.

10 (Plaintiff's Exhibit 17 marked for
11 identification.)

12 Q. Plaintiff's Exhibit 17 is
13 three pages. The first page is titled
14 application for the court to request
15 counsel. It's dated March 19, 2010.

16 Is that your signature,
17 Mr. Cho?

18 A. Yes, it's true.

19 Q. And then the next two pages
20 are a request to proceed in forma pauperis.
21 It's also signed by you?

22 A. Yes, it's true, 19th day of
23 March, 2010.

24 Q. Paragraph two on the first
25 page says: I will close down my business

Page 1

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 ECF CASE
5 10 Civ. 0706 (JSR)

6 - - - - -x
7 RICHARD MERINO, DANY CUX BATEN, ELIAS
8 ANTONIO HERNANDEZ, and JORGE OREA PAEZ,
9 individually and on behalf of all others
10 similarly situated,,
11

12 Plaintiffs,

13 -against-

14 BEVERAGE PLUS AMERICA CORP., SMC USA
15 CORP., YUN S. CHO, GRAND BEVERAGE CORP.
16 and YUN C. CHO,
17

18 Defendants.
19 - - - - -x

20 500 Pearl Street
21 New York, New York
22

23 July 1, 2010
24 11:42 a.m.
25

26 DEPOSITION of DEMETRIO RAFAEL MENDOZA, a
27 non-party Witness in the above-entitled action, held
28 at the above time and place, taken before Kim
29 , Registered Professional Reporter and
30 Notary Public of the State of New York, pursuant to
31 the Federal Rules of Civil Procedure.

32 * * *

1
2 APPEARANCES:
3

4 VLADECK, WALDMAN, ELIAS & ENGELHARD, PC

5 Attorneys for Plaintiffs

6 1501 Broadway

7 New York, NY 10036

8 BY: ANAND SWAMINATHAN, ESQ.

9 MAIA B. GOODELL, ESQ.
10
11

12 YUN S. CHO

13 Pro Se Defendant

14 5887 55th Street

15 Maspeth, NY 11378
16
17
18
19
20
21
22
23
24
25

ALSO PRESENT: MARISA ROTHSTEIN;

VLADECK, WALDMAN, ELIAS & ENGELHARD, PC,

YUN C. CHO

* * *

Page 22

D.R. MENDOZA

A. No.

Q. When he does communicate with the workers once in a while, what language does he communicate with them in?

A. English.

Q. Do the workers speak English?

A. Yes.

Q. All of them?

A. Well, not all of them. Maybe one or two they don't talk good English, but they can communicate.

Q. You said one or two. One or two could communicate or --

A. One or two cannot communicate well, but their English is understandable.

Q. How many total workers are there currently?

A. Currently we have -- so far we have about five. Getting busy sometimes, when it's busy we get up to eight.

Q. When is it busy?

A. Summertime.

Q. When you say summertime, what months?